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Supreme Court of the United States

October Term 1941

No. 580

FORD MOTOR COMPANY,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit and Brief in Support Thereof

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Petition for Writ of Certiorari

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The above named petitioner prays that a Writ of Certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit entered June 5, 1941, affirming an order of the Federal Trade Commission directing petitioner to cease and desist from using a certain alleged unfair method of competition in interstate commerce.

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 404) was filed June 5, 1941, and is printed in 120 F (2d) 175.

BASIS OF JURISDICTION

Jurisdiction is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 5 of the Federal Trade Commission Act, as amended, U.S.C.A. Title 15, Section 45.

The decree of the Circuit Court of Appeals was entered June 5th, 1941 (R. 403).

A petition for rehearing (R. 419) was denied by the Circuit Court of Appeals on June 25, 1941 (R. 433) without opinion.

SUMMARY STATEMENT

The Federal Trade Commission, under date of December 1, 1936, filed a complaint against petitioner, Ford Motor Company (and a certain finance company as to which the complaint was dismissed prior to the hearing before the Commission), charging that the petitioner was engaged in unfair methods of competition in interstate commerce, contrary to Section 5 of the Federal Trade Commission Act, in that it was causing advertising matter to be circulated to the effect that under the Universal Credit Company's Authorized Ford Finance Plan a new Ford car could be purchased at $25.00 a month with "financing at ½ of 1% a month, or 6% for 12 months" (R. 29). The complaint charges that this advertising was deceptive to prospective purchasers of motor vehicles on the ground that such purchasers supposed the plan to refer to 6% simple interest on declining balances, as reduced from time to time by the monthly payments. Petitioner's answer denied the material allegations of the complaint (R. 33, 41). The method of calculating the finance charge under the plan referred to is to add to

the balance to be financed an amount equal to ½ of 1% thereof for each month during which the contract, by its terms, is to continue, and this total sum is divided by the number of months during which the deferred payments are to be made, the quotient being the amount of each installment so payable (R. 35, 108, 109).

The following facts are undisputed in the record:

The Ford Motor Company ships its automobiles from its factory in Dearborn, Michigan, to various dealers located throughout the United States. It sells its cars outright to these dealers. By the time a car has reached the dealer, the Ford Motor Company has been paid in full and has no further right, title, or interest in or to the car (R. 95-99).

The financing plan, the advertising of which is complained of by the Commission, relates solely to the financing of time payments on retail purchases of such automobiles by members of the public from the dealers. It has nothing whatever to do with the sale of automobiles by the Ford Motor Company to such dealers or to any one else (R. 103).

There is no evidence in this record of any such retail sales being made in *interstate* commerce by any such dealer, but the contrary is obviously the fact—that all sales by dealers to members of the public are in *intrastate* commerce.

The Financing Plan contained no reference to "interest." The financing plan is identical in principle with the plan used by the Federal Housing Administration in its Modernization Credit Plan under Title I of the National Housing Act (Respondent's* Exhibits 7 and 8, R. 327-8), and is identical in principle with the plan used by the Electric Home and Farm Authority organized pur-

*Respondent's Exhibit—"Respondent" is used here to designate Ford Motor Company, which was Respondent in the proceedings before the Commission.

suant to an act of Congress for financing domestic electric appliances (Respondent's Exhibit 9, R. 328-9). Both of these federal institutions in their circulars describe the finance charge which is arrived at in the same way as the charge under the finance plan involved here, as being "interest" or "discount" (Respondent's Exhibits 7 and 9).

Small loan departments of banks also follow an identical practice in regard to small loans except that they (unlike the petitioner in its advertising) refer to the finance charge as "interest" (R. 289, 332, 336).

Practically all the advertisements of the plan shown by the record to have been published either by the Ford Motor Company or by dealers in Ford cars, or by the finance company, contain either an adequate explanation from which any one interested in doing so might easily determine the exact working of the plan and the actual amount of the financing charge, or definite advice to the purchaser to see or consult a Ford dealer concerning the plan. (See exhibits*).

There is no evidence in the record that a single one of the fifteen so-called "public" witnesses who testified was deceived into the purchase of an automobile, or even induced to enter into negotiations for the purchase thereof by any advertisement of the finance plan, whether published by this petitioner or by any other automobile or finance company, and there is no evidence that any of said witnesses was influenced by the plan at all, or even interested therein. The evidence shows that if such witnesses had been interested in the operation of the plan they would have asked a dealer for the details thereof (R. 276 and 278; 306; 309; 318; 333; 337 and 338; 350; 371; 378).

*(It was stipulated by the parties, R. 24, that all of the exhibits be considered and treated as physical exhibits and are therefore not reproduced in the printed record. These exhibits as certified to this court are in two separate volumes.)

Testimony elicited by the Commission's counsel, upon insistence that some of such witnesses give their offhand impression as to what the percentage phrase itself might convey to them upon a casual glance at the advertisement, goes no further than to result in a substantially evenly divided expression of opinion as between those that surmised that it referred to simple annual interest upon declining balances (R. 229; 245-6; 262-3; 302; 348; 374) and those who supposed it to refer to exactly what the plan called for, namely a financing charge of a certain percentage of the original unpaid balance without diminution resulting from payment in instalments (R. 285, 327, 334-5, 342, 356, 367).

The financing plan, the advertising of which is here complained of, was first announced by the General Motors Acceptance Corporation on October 21, 1935 (Respondent's Exhibit 1, R. 115). The adoption of same was announced by the Ford Motor Company early in January, 1936 (Commission's Exhibit 1), and by other motor car companies in the interim. The uncontradicted evidence in the record shows that the finance charges in the retail sale of motor vehicles prior to the advent of this plan were considerably higher than those called for by this new plan (R. 143, 212, 288, 289, 385, 391).

There is no evidence in the record that any automobile manufacturer, or any dealer, or any finance company, either approved, adopted, or used, any particular form or kind of advertising of such finance plan, or found it necessary or advisable so to do, in order to meet competition. On the contrary, the record uniformly establishes that the various *manufacturing* companies that adopted or approved the use of such plan following its original announcement, did so *to meet the competition created by the beneficial features of the plan itself*, in-

cluding the fact that it offered a simple method of computing time payment charges, prevented dealers from packing or adding arbitrary charges, and because it materially lowered the theretofore existing cost of financing time payments on automobile purchases, and because retail purchasers were requesting dealers for something equally as good (R. 104, 105, 121, 131, 132, 141, 142, 144, 148, 150, 155, 158, 161, 167, 183); and that the various *finance* companies met the plan as a matter of competition *because the terms offered by it were lower than the financing rates then offered by those companies* (R. 143, 144, 196, 213, 362, 385, 391).

QUESTIONS PRESENTED BY THIS PETITION

The questions presented are:

(1) Is the method complained of, that is the advertising of the finance plan, a method of competition in interstate commerce?

(2) Is the method complained of unfair?

(3) Is the form of the order proper?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

(1) The United States Circuit Court of Appeals, Sixth Circuit, has decided an important question of federal law which has never been, but should be, settled by this court.

(2) The United States Circuit Court of Appeals, Sixth Circuit, has decided certain federal questions in a way probably in conflict with applicable decisions of this court:

(a) In respect to the jurisdiction of the Federal Trade Commission over alleged unfair methods of competition in intrastate commerce (Federal Trade Commission v. Bunte Bros. Inc. (decided February 17th, 1941) 61 Sup. Ct. Rep. 580);

(b) In determining that certain alleged practices are unfair;

(c) In affirming an order to cease and desist so general in terms that it varies from the issues in the complaint, and prohibits the doing of the obviously proper. (*Federal Trade Commission v. Gratz,* 253 U. S. 421, 40 S. Ct. 572; *Wrisley Company v. Federal Trade Commission,* 113 Fed. 2d 437, at 442.)

Wherefore it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Court of Appeals should be granted.

Dated August 28, 1941.

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